PETITION FOR HABEAS CORPUS AND CERTIORARI.

SUPREME COURT OF THE UNITED STATES.

No. [illegible]—ORIGINAL.

EX PARTE IN THE MATTER OF BENJAMIN BROWN, ELI WOOD, JOHN H. HALLIGAN, GRANVILLE ROSE, WILLIAM ANDREWS, AND PHILIP STONEMETZ, PETITIONERS.

ON PETITION FOR WRITS OF HABEAS CORPUS AND CERTIORARI.

FILED OCTOBER 8, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 18.—ORIGINAL.

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1 In the Supreme Court of the United States.

EX PARTE BENJAMIN BROWN ET AL.

Petition for habeas corpus and certiorari.

It is moved on behalf of the petitioners, that they have leave to file their petition in this case.

Oct'r 6th, 1869.

W. W. BOYCE,
Of Counsel for Petitioners.

In the Supreme Court of the United States.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

The petition of Benjamin Brown, Eli Wood, Granville Rose, Philip Stonmets, William Andrews, John Holligan, and James Wharton, citizens of the United States and of the State of Texas, respectfully shows—

2 That they are illegally imprisoned and restrained of their liberty, under color of the authority of the United States, in violation of the Constitution and laws of the United States, at the United States military fort of Calvert, in the State of Texas, by Brevet Major General J. J. Reynolds, and a military commission, appointed by said Major General Reynolds, composed of Brevet Major General Alvin C. Gillim, Brevet Major Thomas H. Norton, Capt. A. M. Brown, Brev't Major Edwin E. Sellers, Capt. J. H. Bradford, and 1st Lieut'nt Leon D. Matile.

Petitioners are so restrained of their liberty for the purpose of being tried by said military commission upon a charge of murder, alleged to have been committed by petitioners on the 25th day of June, 1869, in the county of Robertson, and State of Texas.

Petitioners are not now, and never were, in the military or naval service of the United States, nor in the militia in actual service of

3 the United States in time of war or public danger, nor are they now, nor have they ever been, in any manner whatever, connected with the military or naval service of the United States; and the offence with which petitioners are charged, and for which they have been deprived of their liberty and put on trial as aforesaid, is not a case arising in the land or naval forces of the United States, or the militia when in actual service in time of war or public danger.

Petitioners deny that they are guilty of the offence charged against them; but if any offence has been committed by them, or either of them, it is an offence against the laws of Texas, and for which they can only be tried in accordance with the laws and in the courts of Texas.

That for a long time preceding the arrest of your petitioners, as aforesaid, the rebellion had ended in the State of Texas, and peace, order, and civil authority existed in the State of Texas and throughout the United States, and still so continues to exist.

4 That the courts of justice, both of the State of Texas and of the United States, are open in the State of Texas, and have been for a long period of time preceding the arrest of your petitioners, during which time said courts have been, and now are, in the regular exercise of their functions.

That heretofore, to wit, on the 17th day of August, A. D. 1869, your

petitioners filed their petition in the circuit court of the United States for the western district of Texas, at Austin, in said State of Texas, in term time, said court holding sessions for the adjourned June term, A. D. 1869, the Hon. T. H. Duval, United States district judge, sitting as circuit court judge, and holding said court; that in their petition, addressed to the said T. H. Duval, judge as aforesaid, your petitioners set forth that they were illegally imprisoned and restrained of their liberty under color of the authority of the United States, in violation of the Constitution and laws of the United States, at the United States military fort of Calvert, in the State of Texas, by Brevet Major
5 General J. J. Reynolds, and a military commission, appointed by said Major General J. J. Reynolds, composed of the military officers hereinbefore mentioned, setting forth the facts of their case as hereinbefore mentioned, and prayed for a writ of habeas corpus to relieve them from their said illegal imprisonment.

That thereupon, upon their said petition for the writ of habeas corpus, in term time in the said circuit court of the United States, before the said the Hon. T. H. Duval, presiding judge, the following proceeding were had, that is to say:

"Circuit court of the United States for western district of Texas—Monday morning, Aug. 16, 1869—at Austin, holding sessions for the adjourned June term, A. D. 1869.

"No. 1120.—EX PARTE BENJ. BROWN ET AL.

Petition for writ of habeas corpus.

"Applicants, Benjamin Brown, Eli Wood, Granville Rose, Philip Stonmits, William Andrews, John Holligan, and James Wharton.
6 Argued August 17th, '69, and held for consideration.

"TUESDAY MORNING, *August 17th*, 1869.—On this day came the parties, by their counsel, T. J. Beale, and the United States, by Acting District Attorney W. P. De Normandie; and the court, having fully considered the application in this cause, is of opinion that the facts set forth in the petition do not present a case in which petitioners are 'deprived of their liberty in contravention of the Constitution or laws of the United States. The application is therefore refused, and the petition is dismissed for the reasons set forth in the opinion delivered and made a part of this decree,"

All of which will more fully appear, together with a copy of said opinion, by reference to said proceedings, a copy of which is hereto annexed, marked Exhibit "A," which your petitioners crave may be taken as a part of their petition, and reference had thereto as often as may be necessary.

Your petitioners state, that they are advised by their counsel that their imprisonment is illegal, and that the said the Hon. T. H.
7 Duval, judge aforesaid, erred in refusing the prayer of their petition for the writ of habeas corpus, and relief from said imprisonment, and they submit that the illegality of their imprisonment consists in this—

1. That they have been arrested by military order, in violation of Article IV of the amendments to the Constitution of the United States.

2. That they are held to answer by military authority, for a capital and otherwise infamous crime without presentment or indictment of a grand jury, in violation of Article V of the amendments to the Constitution of the United States.

3. That they are deprived of the right to a speedy and public trial by an impartial jury of the State and district where the crime is charged to have been committed, in violation of Article VI of the amendments of the Constitution of the United States.

4. That they are deprived of a jury trial, in violation of section 2 of Article III of the Constitution of the United States.

8 Wherefore your petitioners pray for a writ of habeas corpus to be directed to Brev't Major General J. J. Reynolds, Brev't Major General Alvan C. Gillem, Brev't Major Thomas H. Norton, Capt. A. M. Brown, Brevet Major Edwin E. Sellers, Capt. J. H. Bradford, and First Lieutenant Leon D. Matile, to bring up the bodies of your petitioners, that your honors may enquire into the cause of their imprisonment, and for a writ of certiorari to Mathew Hopkins, the clerk of the circuit court of the United States for the western district of Texas, commanding him to certify the record in the case of your petitioners' application in said court for the writ of habeas corpus, by which the cause of their imprisonment might be examined and its legality investigated, and the action of the presiding judge, the said Hon. J. H. Duval, in refusing the application for the writ of habeas corpus, may be considered and reviewed by this honorable court by virtue of its appellate jurisdiction, to the end that your petitioners may be relieved from said imprisonment, and remitted to the civil authorities of the

9 State of Texas, and for such other and further relief as the nature and circumstances of the case may require; and your petitioners will ever pray, &c.

October 6th, 1869.

BENJAMIN BROWN,
ELI WOOD,
GRANVILLE ROSE,
PHILLIP STONMETS,
WILLIAM ANDREWS,
JOHN HOLLIGAN,
JAMES WHARTON,
By W. W. BOYCE.

W. W. BOYCE, *Counsel.*

COUNTY OF WASHINGTON, *City of Washington:*

The above-named W. W. Boyce, being duly sworn, says that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

W. W. BOYCE.

Sworn & subscribed before me this 6th day of October, 1869.
[SEAL.] EDM. A. BROWN,
U. S. Commissioner.

Filed 8 October, 1869.

10 Circuit court of the United States for the western district of Texas, at Austin, holding sessions for the adjourned June term, A. D. 1869.

MONDAY MORNING, *August* 16, 1869.

No. 1112.—EX PARTE BENJ. BROWN ET AL.

Petition for writ of habeas corpus.

In this case came the applicants, Benjamin Brown, Eli Wood, Gran-

ville Rose, Philip Stonmets, William Andrews, John Holligan, and James Wharton, by their solicitor and counsel, T. J. Beall, esq., and came also the United States, by Acting U. S. District Attorney W. P. De Normandie; and thereupon came on to be heard the petition in this cause, and the same was argued by counsel, and held for consideration by the court.

TUESDAY MORNING, *August* 17, 1869.

No. 1112.—EX PARTE BEN. BROWN ET AL.

Petition for habeas corpus.

On this day came the parties—the applicants by their counsel,
11 T. J Beall, esq., and the United States by Acting United States District Attorney W. P. De Normandie—and the court, having fully considered the application in this cause, is of opinion that the facts set forth in the opinion do not present a case in which the petitioners are deprived of their liberty in contravention of the Constitution or laws of the United States. The application is therefore refused, and the petition dismissed for the reasons set forth in the opinion delivered and made a part of this decree; which is in words to wit:

In U. S. circuit court, western district of Texas, Aug. 17, 1869.

EX PARTE BENJAMIN BROWN ET AL.

Petition for habeas corpus.

The petition for the writ of habeas corpus is made out and sworn to, in accordance with the provision of the act of Congress approved Feb'y
5, 1867, entitled an act to amend "An act to establish the judicial
12 courts of the United States," approved Sept'r 24, 1789. It sets forth fully the facts concerning the detention of the parties, shewing it to be by Brev't Major Gen'l Reynolds, commanding the 5th military district, and Brev't Major T. H. Norton, commanding at the post of Calvert, and that they are so restrained of their liberty for the purpose of being tried before a military commission, already convened for that purpose, by order of said Major General Reynolds, and now sitting at Calvert aforesaid, in Robertson County, on a charge of murder alleged to have been committed by petitioners on the 25th day of June, 1869. The act under which the application is made provides that the justice or judge to whom such application shall be made shall forthwith award a writ of habeas corpus, unless it shall appear from the petition itself that the party is not deprived of his or her liberty in contravention of the Constitution or laws of the United States.

Now, the cause of the commitment of these parties, and the author-
13 ity a claim under which it has been done, is as appears to the court from a consideration of the petition itself, and the act of Congress of 2d March, 1867, entitled "An act to provide for the more efficient government of the rebel States," as if they had been fully set forth in the return of the officers having the prisoners in charge. The return would show nothing more to the court than is already known from the petition itself and the provisions of the act last referred to. If it were proper to grant the writ at all (which in my judgment it is not), I certainly should not do so for the useless purpose of merely getting the

officers' return, and then remanding the prisoners into their custody. I am as well satisfied now as I would be then, that the prisoners are not "deprived of their liberty in contravention of the Constitution or laws of the United States."

Believing that I have no authority to grant the writ of habeas corpus in this case, under the provisions of the act of Congress of 2d of March, 1867, before referred to, the judgment of the court is, that it be refused and the petition dismissed.

14 I will here take occasion to say that my refusal to grant the writ is as much a final judgment as would be the decision of the court remanding the prisoners, after the return made. And I have been able to [to] perceive no reason why a revision of such judgment may not be had by the Supreme Court of the United States in behalf of the petitioners, in one case as well as the other.

T. H. DUVAL,
U. S. District Judge, sitting as Circuit Court Judge.

Filed October 8th, 1869.

15 To the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States:

The petition of Benjamin Brown, Eli Wood, John H. Halligan, Granville Rose, William Andrews, and Philip Stonemetz, respectfully shows that they are citizens of the United States and of the State of Texas, and of the county of Robertson in said State, and are illegally imprisoned and restrained of their liberty under color of the authority of the United States, in violation of the Constitution and laws of the United States, at the military post of Calvert, in the State of Texas, by Brevet Major General J. J. Reynolds, and a military commission, appointed by said Major General Reynolds, composed of Brevet Major General Alvan C. Gillem, Brevet Major Thomas H. Norton, Captain A. M. Brown, Brevet Major Edwin E. Sellers, Captain J. H. Bradford, and 1st

16 Lieut. Leon A. Matile. Petitioners are so imprisoned and restrained of their liberty for the purpose of being tried, and are now actually being tried, by said military commission, upon the charge of murder, alleged to have been committed by petitioners on the 25th day of June, A. D. 1869, in the county of Robertson, and State of Texas. Petitioners are private citizens of the United States, and of the State of Texas, and are not now, and never were, in the army or naval service of the United States, nor in the militia in actual service of the United States, and are not now, and never were, in any way connected

17 with the army or navy of the United States, and the charge against petitioners is not a case arising in the land or naval forces, nor in the militia when in actual service in time of war or public danger; and if petitioners are guilty of the crime charged against them, which they expressly deny, it is an offense against the laws of the State of Texas, and for which, as private citizens, they can only be tried in accordance with the Constitution and laws of the State of Texas. Petitioners were arrested and imprisoned by the military authorities aforesaid, and are now restrained of their liberty without warrant founded on affidavit; that the civil courts first had and held jurisdiction of the offense charged against petitioners, and petitioner Benjamin Brown was actually on trial before Peter Franz, justice of the peace in and for Robertson County aforesaid, sitting as an examining court, when he was arrested and taken from the custody of the civil court, and the proceedings arrested by order of the military authorities aforesaid,

18 and petitioners were ordered to be tried, and are now being tried, by the military commission aforesaid. Petitioners further show that no indictment or presentment of a grand jury has been found against them for said alleged crime, and that they are denied the right of trial by jury by said military commission, and are now restrained of their liberty and held to answer before the said military commission, who now have them on trial before them for said alleged crime of murder, without presentment or indictment of a grand jury, and they deny the right of trial by jury, all in violation of the Constitution and laws of the United States, and of the State of Texas. Petitioners represent that the late jurisdiction in the State of Texas, and other States of the Union, has long since terminated, and that peace, order, and civil authority exists in the State of Texas, and throughout the United States; that the civil courts, both State and federal, are open in the State of Texas, and in full and unobstructed exercise of their proper au-
19 thority; that the district court of Robertson County has held its regular sessions and transacted business of both a civil and criminal nature since the 15th day of September, A. D. 1865, and will hold its next regular session on the 5th Monday after the 1st Monday in September next, for the trial of all offense against the State of Texas, committed within the county of Robertson aforesaid; that Nathaniel H. Davis is presiding judge of said court by military appointment, and there are a sufficient number of persons, residents of said county, who are qualified to sit as petite and grand jurors to enable said court to transact the business of its term; that if the offense charged was committed, which they deny, the same is trialable by said court aforesaid, after due presentment or indictment of the grand jury of said county; and that this military tribunal has no jurisdiction to further restrain petitioners of their liberty.

Whereas they prey for the writ of habeas corpus, directed to the said Maj. Gen'l J. J. Reynolds, Brevet Major General Alvan C. Gillem,
20 Brevet Major Thomas H. Norton, Brev't Major Edwin E. Sellers, Capt. A. M. Brown, Capt. J. H. Bradford, and Leut. Leon A. Matile, commanding them to have the bodys of your petitioners before this honorable court, at a day to be named by this court, to show by what authority petitioners are imprisioned and restrained of their liberty; that the course of detention of prisoners may be enquired into, to the end that petitioners may be restored to the liberty of which they have been unconstitutionally and illegally restrained.

B. BROWN.
ELI WOOD.
PHILIP STONEMETZ.
G. W. ROSE.
WILLIAM ANDREWS.
J. H. HALLIGAN.

Personally appeared before me Benjamin Brown, Eli Wood, John H. Halligan, Granville Rose, William Andrews, and Philip Stonemetz, the petitioners, and made oath that this petition is true in substance and in fact.

21 THOS. J. HALL,
U. S. Commissioner Western District of Texas.

AUG. 21*st*, 1869.

Circuit court of the United States for the western district of Texas, at Austin, holding sessions for the adjourned June term, A. D. 1869.

MONDAY MORNING, *Aug.* 16, 1869.

No. 1120.—EX PARTE BEN. BROWN ET AL.

Petition for writ of habeas corpus.

In this cause came the applicants, Benjamin Brown, Eli Wood, Granville Rose, Philip Stonemetz, William Andrews, John Holligan, and James Wharton, by their solicitor and counsel, T. J. Beall, esq'r, and came also the United States by Acting U. S. District Attorney W. P. De Normandie, and thereupon came on to be heard the petition in this cause, and the same was argued by counsel, and held for consideration by the court.

TUESDAY MORNING, *August* 17, 1869.

22 No. 1120.—EX PARTE BEN. BROWN ET AL.

Petition for habeas corpus.

On this day came the parties—the applicants by their counsel, T. J. Beall, esq'r, and the United States by Acting United States District Attorney W. P. De Normandie—and the court, having fully considered the application in this cause, is of the opinion that the facts as set forth in the petition, do not present a case in which the prisoners are "deprived of their liberty in contravention of the Constitution or laws of the United States."

The application is therefore refused, and the petition dismissed for reasons set forth in the opinion delivered and made a part of this decree; which is in words, to wit:

In U. S. circuit court, west'n dist. of Texas, August 17, 1869.

EX PARTE BENJAMINE BROWN ET AL.

Petition for habeas corpus.

The petition for the writ of habeas corpus is made out and sworn
23 to in accordance with the provisions of the act of Congress approved Feb'y 5, 1867, entitled an act to amend "An act to establish the judicial courts of the United States," approved Sept. 24, 1789. It sets forth fully the facts concerning the detention of the parties, showing it to be by Brev't Major Gen'l Reynolds, commanding the 5th military district, and Br'v't Major T. H. Norton, commanding at the post of Calvert, and that they are so restrained of their liberty for the purpose of being tried before a military commission, already convened for that purpose, by order of said Major Gen'l Reynolds, and now sitting at Calvert aforesaid, in Robertson County, on a charge of murder alledged to have been committed by petitioners on the 25th day of June, 1869. The act under which the application is made provides that the "justice or judge to whom such application shall be made shall forthwith award a writ of habeas corpus, unless it shall appear from the petition itself that the party is not deprived of his or her liberty in contravention of

the Constitution or laws of the United States." Now, the cause of the commitment of these parties, and the authority or claim under which it has been done is as apparent to the court from a consideration of the petition itself, and the act of Congress of the 2d of March, 1867, entitled "An act to provide for the more efficient government of the rebel States," as if they had been fully set forth in the return of the officer having the prisoners in charge. The return would show nothing more to the court than is already known from the petition itself, and the provisions of the act last refered to. If it were proper to grant the writ at all (which in my judgment it is not), I certainly should not do so for the useless purpose of merely getting the officers' return, and then remanding the prisoners into their custody. I am as well satisfied now as I could be then, that the prisoners are not "deprived of their liberty in contravention of the Constitution or laws of the United States." Believing that I have no authority to grant the writ of habeas corpus in this case, under the provisions of the act of Congress of 2nd March, 1867, before refered to, the judgment of the court is that it be refused and the petition dismissed.

I will here take occasion to say that my refusal to grant the writ is as much a final judgment as would be the decision of the court remanding the prisoners after return made.

And I have been able to perceive no reason why a revision of such judgment may not be had by the Supreme Court of the United States in behalf of petitioners in one case as well as the other.

T. H. DUVALL,
U. S. District Judge, sitting as Cirtuit Court Judge.

I, Mathew Hopkins, clerk of the circuit court of the United States for the western district of Texas, sitting at Austin, do hereby certify that the foregoing three a id one-half pages contains a full and true copy of the orders of courts to final disposition of the case No. 1120, ex parte Ben. Brown et al., upon petition for habeas corpus, together with the opinion of the court entered and made a part of the final order.

In testimony whereof, I hereto set my hand and the impress of the seal of said circuit court this 17th day of August, A. D. 1869.

[SEAL.] MATHEW HOPKINS, *Clerk.*

EX PARTE BEN. BROWN, ELI WOOD, JOHN H. HALLIGAN, GRANVILLE ROSE, WILLIAM ANDREWS, AND PHILIP STONEMETZ.

On habeas corpus petition.

In chambers, before Hon. S. P. Chase, Chief Justice U. States, Sept. 6, 1869.

The counsel, D. U. Barziza, for the petitioners states that in a conversation held with Attorney General Hoar, Sep. 4, 1869, the said Attorney General, although expressly refusing to enter into any agreement in regard to this case, said to me that he did not think my clients, the said petitioners, had any reason to fear that the sentence of the military commission now trying them would be executed until the decision of the Yerger case from Mississippi in the Supreme Court at next session, or until the decision of the case of the petitioners by the Supreme Court, at the same time, upon their application for a writ of habeas corpus and certiorari directed to the circuit court for Texas, or

words to that effect, and with that substantial meaning. But the Attorney General said he would not give me assurance of this, but thought there would be no danger until the meeting of Supreme Court, and no necessity of haste on the part of petitioners, but said he would agree to nothing on behalf of the government.

President Grant also stated to me that the Yerger case was to be a precedent for similar cases.

Under these circumstances, it is moved that further action upon this application be stayed until the second Monday in October next, or until further application shall be made for its renewal.

D. U. BARZIZA,
Att'y for Petitioners.

28 EX PARTE BEN. BROWN, ELI WOOD, JOHN H. HALLIGAN, GRANVILLE ROSE, WILLIAM ANDREWS, AND PHILIP STONEMETZ.

Petition for habeas corpus.

At chambers, before S. P. Chase, Chief Justice of the United States, Sept. 6th, 1869.

Upon hearing of the petition in this case, it appears from the statement of D. U. Barziza, esq., counsel for the petitioners, that there is no good reason to apprehend that the sentence of the military commission now trying the said petitioners will, if against them or either of them, be carried into execution until the question arising upon their petition shall have been determined by the Supreme Court of the United States, upon hearing of an application in behalf of E. M. Yerger for a writ of habeas corpus, with writ of certiorari directed to the circuit court of the United States for the district of Mississippi, to be made at the session of the Supreme Court of the United States in October next, or upon
29 hearing of a similar application for habeas corpus with certiorori directed to the circuit court of the United States for the western district of Texas, to be made to the said Supreme Court at its said October session, in behalf of the petitioners. It is thereupon and on motion of the counsel for the petitioners—

Ordered, That further action upon this petition is postponed until the second Monday of October next, at chambers in the city of Washington; at which day, or earlier if it be found needful, this application may be recorded.

S. P. CHASE,
Chief Justice of the U. States.